

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Alpine Broadcasting, Ltd.)	File No.: EB-00-DV-409
Licensee, Station KKIT(FM))	
Angel Fire, New Mexico)	
)	
and)	and
)	
Alpine Broadcasting Ltd. Partnership)	File No.: EB-00-DV-504
Licensee, Station KXMT(FM))	NAL/Acct. No. 200232800002
Taos, New Mexico)	FRN 0005-9526-68

FORFEITURE ORDER

Adopted: September 23, 2002

Released: September 26, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800), to Alpine Broadcasting, Ltd., licensee of Station KKIT(FM), Angel Fire, New Mexico, and Alpine Broadcasting Ltd. Partnership, licensee of Station KXMT(FM), Taos, New Mexico, collectively ("Alpine"), for willful violation of Section 11.35(a) of the Commission's Rules ("Rules").¹ The noted violations involve Alpine's failure to have operational Emergency Alert System ("EAS") equipment at Stations KKIT(FM) and KXMT(FM).

2. On May 16, 2002, the District Director of the Commission's Denver, Colorado Field Office ("Denver Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL")² in the amount of sixteen thousand dollars (\$16,000). Alpine filed a response on May 31, 2002.

¹ 47 C.F.R. §§ 11.35(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232800002 (Enf. Bur., Denver Office, released May 16, 2002).

II. BACKGROUND

3. On August 9, 2001, a Commission agent from the Denver Office conducted inspections of Stations KKIT(FM) in Angel Fire, New Mexico and KXMT(FM) in Taos, New Mexico. During the inspections, the agent found that neither KKIT(FM) nor KXMT(FM) had operational EAS equipment installed. There were no entries in the station log indicating that the EAS equipment had ever been operational or had been taken out of service for repairs.

4. In its response, filed on May 31, 2002, Alpine does not dispute the violations. Nevertheless, Alpine requests cancellation or substantial reduction of the forfeiture for other reasons. Alpine asserts its inability to pay the forfeiture and that it has a history of no prior offenses. Alpine also requests that the Commission consider that from March through August of 2001, Alpine was in the process of relocating the studio facilities of both KKIT and KXMT, and that although the inspections occurred approximately five months after the relocation project began, the final installations were continuing through the end of August 2001. Finally, Alpine requests the Commission to consider that it took immediate corrective action once it became aware that the contract engineer in charge of the relocation project failed to timely install the EAS equipment.

III. DISCUSSION

5. The forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining Alpine’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

6. The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁷ Section 11.35 of the Rules provides that broadcast stations are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. On August 9, 2001, the EAS equipment at KKIT(FM) and KXMT(FM) was not installed and connected so as to be operational. Thus, Alpine was in violation of Section 11.35(a) of the Rules.

7. In support of its request for cancellation or reduction of the forfeiture, Alpine contends that assessing the full forfeiture amount would impose a serious financial burden. In support of this

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 11.1.

contention, Alpine submitted copies of its 1998, 1999, and 2000 federal income tax returns; its audited financial statements for 1999, 2000, 2001, and 2002; and other business information. Although other factors can be considered, the best indication of a company's ability to pay a forfeiture amount is its gross receipts.⁸ After reviewing the financial data submitted, we believe the proposed forfeiture of \$16,000 is not excessive in light of Alpine's gross revenues. Further, although Alpine states that for the five months prior to the inspection, it was in the process of relocating the KKIT(FM) and KXMT(FM) studios and that the final installations were continuing through the end of August 2001, this does not excuse Alpine's violations of the EAS rules. Alpine could have sought a waiver of the EAS rules if the relocation meant the EAS equipment was going to be temporarily out of service for more than sixty days, but it did not. Finally, while Alpine claims that it took immediate corrective action once it became aware that its contract engineer had failed to timely reinstall the EAS equipment, licensees are responsible for the acts and omissions of its employees and contractors.⁹ Moreover, remedial actions taken to correct the violations, while commendable, are not mitigating factors.¹⁰ However, after considering Alpine's overall history of compliance with the Commission's rules, we conclude that it is appropriate to reduce the forfeiture amount from \$16,000 to \$12,800.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Alpine Broadcasting Ltd. and Alpine Broadcasting Ltd. Partnership are LIABLE FOR A MONETARY FORFEITURE in the amount of twelve thousand eight hundred dollars (\$12,800) for violating Section 11.35(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232800002, and FRN 005-9526-68. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

⁸ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

⁹ See *Netcom Technologies, Inc.*, 16 FCC Rcd 9524, 9526 (Enf. Bur. 2001); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

¹⁰ See, e.g., *Puerto Rico Tower Co., Inc.*, 16 FCC Rcd 271, 273 (Enf. Bur. 2001).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

10. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Alpine Broadcasting Ltd. And Alpine Broadcasting Ltd. Partnership at P.O. Box 2158, Ketchum, Idaho 83340 and to their counsel Richard A. Helmick, Esq. at Cohn and Marks LLP, 1920 N Street, NW, Suite 300, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau